

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0141, Little Island Pond Watershed Association & a. v. Town of Pelham, the court on May 19, 2006, issued the following order:

The plaintiffs, Little Island Pond Watershed Association & a., appeal an order of the trial court affirming a decision of the Town of Pelham Zoning Board of Adjustment (ZBA) on a site plan application for a proposed elderly housing complex. They argue that the ZBA erred in finding that the dimensional requirement of the Pelham zoning ordinances that requires three acres of land for a multi-family dwelling does not apply to the proposed complex; instead the ZBA upheld the planning board's determination that the elderly housing complex was required to be located on a lot of five acres or more. We affirm.

The factual findings of the ZBA are deemed prima facie lawful and reasonable and will not be set aside by the superior court absent errors of law, unless the court is persuaded by the balance of the probabilities on the evidence before it, that the decision is unreasonable. Duffy v. City of Dover, 149 N.H. 178, 180 (2003). In this case, the parties agree that the project reviewed by the ZBA was an elderly housing complex. The sole issue before us is whether the ZBA correctly construed the Pelham zoning ordinances. The interpretation of a zoning ordinance is a question of law, which we review de novo. Id. at 181.

The Pelham zoning ordinances are comprised of several articles. Article III, entitled "General Provisions," was first adopted in 1955 and requires that a multi-family dwelling have a minimum lot size of three acres. Article IX entitled "Elderly Housing," was adopted in 1980 and requires that an elderly housing complex may only be located on a lot containing five acres or more. An elderly housing complex is defined as "[o]ne (1) or more buildings containing apartments intended exclusively for occupancy by elderly persons . . . and each complex shall be located on a single parcel or lot of land." Article IX also provides: "To the extent the specific requirements in this Article are inconsistent or at variance with any other requirements contained in this chapter, the requirements imposed herein shall govern and control an elderly housing complex."

Because the ordinances governing elderly housing complexes clearly contemplate that a complex can be comprised of more than one building and the site requirements in Article IX provide specific dimensions for this type of housing, we conclude that the ZBA did not err in finding that the multi-family dwelling requirements did not apply to the proposed elderly housing complex.

Cf. Soraghan v. Mt. Cranmore Ski Resort, 152 N.H. 399, 406 (2005) (specific, later enacted statute controls over general, earlier-enacted statute).

Although the plaintiffs urge us to consider the doctrine of administrative gloss when interpreting the Pelham zoning ordinances, we conclude that the doctrine is not applicable in this case where the ordinances are not ambiguous. Hansel v. City of Keene, 138 N.H. 99, 104 (1993).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**